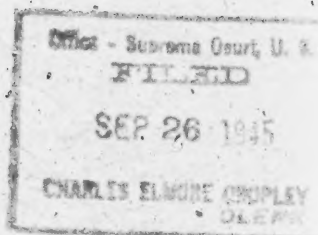


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No. 44

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*In the Supreme Court of the United States*

OCTOBER TERM, 1945

UNITED STATES OF AMERICA, APPELLANT

v.

AMERICAN UNION TRANSPORT, INC., D. C. ANDREWS  
& Co., Inc., ATLANTIC FORWARDING Co., Inc.,  
ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

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**BRIEF FOR THE UNITED STATES**

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## OPINIONS BELOW

The opinions of the specially constituted three-judge District Court for the Southern District of New York on motion for an interlocutory injunction (R. 119-124) and on motion for reargument (R. 124-126) are reported in 55 F. Supp. 682. Its opinion on final hearing (R. 119) is not reported.

## JURISDICTION

The final judgment of the district court was entered on November 30, 1944 (R. 129-130). The

petition for appeal (R. 130-131) was allowed on January 27, 1945 (R. 132-133). This Court noted probable jurisdiction on April 2, 1945 (R. 139). The jurisdiction of this Court is invoked under Section 31 of the Shipping Act of 1916 (39 Stat. 728; 46 U. S. C. 830), the Urgent Deficiencies Act of 1913 (38 Stat. 220; 28 U. S. C. 47a), and Section 238 of the Judicial Code (43 Stat. 938; 28 U. S. C. 345).<sup>1</sup>

#### STATUTE INVOLVED

The relevant portions of the Shipping Act of 1916 (39 Stat. 728; 46 U. S. C. 801 *et seq.*) are set forth in the Appendix, *infra*, pp. 35-44

#### QUESTION PRESENTED

Whether appellees, who are engaged in business in the Port of New York area as forwarders of freight for transshipment by common carriers by water in foreign commerce, are "carrying on the business of forwarding \* \* \* in connection with a common carrier by water" within the meaning of Section 1 of the Shipping Act of 1916.

#### STATEMENT

This is an appeal from a permanent injunction granted by a specially constituted three-judge court, convened pursuant to Section 31 of the

<sup>1</sup> In *Swayne & Hoyt, Ltd. v. United States*, 300 U. S. 297, and in *California v. United States*, 320 U. S. 577, this Court entertained appeals from district courts based on these provisions.

Shipping Act of 1916,<sup>2</sup> setting aside an order issued on May 18, 1943, by the United States Maritime Commission (the "Commission") under Section 21 of the Act (46 U. S. C. 820), requiring appellees among others to file with the Commission answers to a questionnaire concerning certain aspects of their past business transactions. Proceedings prior to the rendition of the final judgment of the court below were as follows:

On August 21, 1942, the Commission, on its own motion under Section 22 of the Act, ordered an investigation into the rules, regulations, practices and operations of persons engaged in the port of New York area in the business of forwarding freight in foreign commerce (R. 11-15, 48). Reciting that a certain freight forwarder (not one of the appellees) had violated Section 17 of the Act, the order of August 21, 1942, asserted that "the public interest requires a general inquiry to determine the extent of the existence of the said practices among all other forwarders in the port of New York subject to said Act" (R. 11-12). The order as subsequently amended named a large number of per-

<sup>2</sup> That Section provides that the "procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the [Commission] \* \* \* shall \* \* \* be the same as in similar suits in regard to orders of the Interstate Commerce Commission \* \* \*" (46 U. S. C. 830). The procedure in respect of the Interstate Commerce Commission is fixed by the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220 (28 U. S. C. 47, 47a)\*



sons, including the 66 appellees here involved, as respondents in the proceedings, averring that each carried on the "business of forwarding in foreign commerce" and was therefore an "other person subject to" the Act (R. 11, 12).

Thereafter (R. 4), the Commission sent to all the respondents named in its order of August 21, 1942, a preliminary questionnaire (R. 136-138) which propounded, among others, the question: "Do you carry on the business of forwarding in connection with common carriers by water in foreign commerce?" Each of the appellees herein answered this question in the affirmative (R. 5, 24).

On December 9 and 10, 1942, public hearings were held before a trial examiner of the Commission in pursuance of the investigation. On the latter date the hearings were adjourned *sine die* to enable the Commission to obtain further information pending a resumption thereof. (R. 120.)

On January 14, 1943, the Commission issued an order (R. 19-23) under Section 21 of the Act requiring appellees and others to file answers within 30 days to another questionnaire concerning their forwarding operations in 1940, 1941 and 1942 (R. 23). On February 11, 1943, prior to the expiration of the 30-day time limit,<sup>3</sup> appellees instituted this suit to enjoin enforcement of the

<sup>3</sup> Section 21 prescribes a \$100 per day penalty for failure "to file any report \* \* \* as required by this section." Appendix, *infra*, p. 42.



Commission's general investigative order of August 21, 1942, and its Section 21 order of January 14, 1943, on the principal ground that appellees are not "other persons" subject to the Act within the meaning of Sections 1 and 21 thereof (R. 1-11). On May 18, 1943, following the entry of orders extending the time within which to respond to the Commission's questionnaire (R. 26-27), the Commission withdrew its order of January 14, 1943, but at the same time issued a substitute order under Section 21 of the Act (R. 27-28) which, like the order withdrawn, required appellees and others to answer within a specified time a questionnaire (R. 29) annexed thereto.<sup>4</sup> By consent of both parties, appellees' suit was continued, without formal amendment of the complaint, against the Commission's substituted order of May 18, 1943 (R. 121, 128).

The United States filed an answer to the complaint on June 17, 1943 (R. 24-29), and on July 2, 1943, moved for summary judgment upon the pleadings, certain affidavits and exhibits, and the record previously made in the administrative hearings held pursuant to the general investigative order of August 21, 1942 (R. 30). On July 14, 1943, appellees moved for interlocutory injunctions against the enforcement of the Com-

<sup>4</sup> This questionnaire, unlike that attached to the order of January 14, 1943, carried the approval of the Director of the Budget (R. 28-29).

mission's order of May 18, 1943, and its general investigative order of August 21, 1942 (R. 38-39).

On November 30, 1943, the statutory three-judge court below denied the appellant's motion for summary judgment and also denied appellees' requested injunction against the Commission's general investigative order on the ground that it did not adversely affect appellees' legal rights. The court, however, granted an interlocutory injunction against the Commission's order of May 18, 1943, holding that appellees are not "carrying on the business of forwarding \* \* \* in connection with a common carrier by water" within the meaning of the Act (R. 119-124). On appellant's motion for reargument of this phase of the court's opinion, the court, on March 8, 1944, issued a second opinion (R. 124-126) adhering to its previous ruling, and on November 30, 1944, after final hearing, it entered findings of fact (R. 126-129), conclusions of law (R. 129), and a final judgment (R. 126-130) permanently enjoining enforcement of the Commission's order of May 18, 1943, on the ground above stated.

In their petition, appellees stated that they "are engaged in arranging, in usual course of \* \* \* business, and as agents for others, for insurance, cartage, warehousing, and other services incidental to and including the affreightment of merchandise consigned to and from points within the United States, from and to points out-

side thereof; the services of [appellees] and their responsibilities to shippers in connection therewith being confined, in the ordinary course of business, to the terminal area \* \* \* [of the Port of New York], and [appellees] do not assume responsibility for delivery thereof at destinations" (R. 2). The court below found that appellees are "engaged in business \* \* \* as forwarders of freight in foreign commerce" (R. 127). The court also found that appellees, "forwarders of freight in foreign commerce" in the Port of New York area, arrange for the "affreightment of merchandise consigned to and from points within the United States from and to points outside thereof", without assuming responsibility for the delivery of the merchandise at destination (R. 128).

#### **SPECIFICATION OF ERRORS TO BE URGED**

The court below erred:

1. In making and entering its final decree setting aside, suspending and annulling the order of the United States Maritime Commission dated May 18, 1943, and permanently enjoining the appellant, its agents, servants and attorneys from in any manner enforcing or instituting any proceeding for the enforcement of said order.
2. In failing to grant summary judgment to the appellant or to dismiss the complaint as being without equity.

3. In concluding that appellees are entitled to a permanent injunction against the enforcement of the said order of the United States Maritime Commission of May 18, 1943.

4. In finding and concluding that appellees and each of them are not an "other person" as defined in the Shipping Act of 1916, as amended.

5. In failing to hold that each of the appellees is an "other person" within the meaning of said Act and is subject to the jurisdiction of the United States Maritime Commission and to its orders issued pursuant to Section 21 of said Act.

6. In finding and concluding that appellees do not carry on the business of forwarding in connection with common carriers by water within the meaning of Section 1 of said Act.

7. In holding that only persons carrying on the business of forwarding who are "a corporation subsidiary to or otherwise affiliated with" a common carrier by water, or "to whom the carrier pays compensation as an inducement to ship by its line" (R. 123) are subject to the jurisdiction of the Maritime Commission and to its orders issued pursuant to Section 21 of said Act.

8. In finding that appellees have no continuing contractual or other relationship with common carriers by water over whose lines they ship merchandise.

9. In finding that the evidence contradicted admissions previously made by appellees that they

do carry on the business of freight forwarding in connection with common carriers by water in foreign commerce.

#### SUMMARY OF ARGUMENT

Section 21 of the Shipping Act of 1916, as amended, enables the Commission to require, as by its order of May 18, 1943, involved here, the filing of "special report[s] \* \* \* or any memorandum of any facts and transactions appertaining to the business of \* \* \* other person[s] subject to this Act," who are defined by Section 1 thereof to include "any person not included in the term 'common carrier by water,' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water." Since appellees are engaged in "carrying on the business of forwarding" as that occupation has traditionally been defined, and since their activities immediately precede the carriage of goods by, or occur upon their receipt from, common carriers by water, the definition of "other persons" in the Act would seem precisely to cover such enterprises.

The interpretation placed by the court below upon the words "in connection with a common carrier by water" which modify the grant of jurisdiction over those engaged in the forwarding business, however, is that coverage was not

intended unless the forwarder is "a corporation subsidiary to or otherwise affiliated with the carrier, or \* \* \* [is one] to whom the carrier pays compensation as an inducement to ship by its line." Such a restrictive reading of broad language, it is submitted, is unjustified. In the only known reported federal cases where an issue has been raised as to the nature and extent of the modifying phrase, *California v. United States* and *City of Oakland v. United States*, both at 320 U. S. 577, state and municipal wharfingers, possessing neither of the qualifications thought by the court below to be implied by the requirement that the businesses of "other persons" be "in connection with" common carriers, were held subject to regulation under the Act. The view herein urged that the phrase is broadly descriptive of a general relationship with the primary field of regulation ("common carriers by water," as defined in the Act) finds support, moreover, in the holding in these cases that (320 U. S. at 586) :

\* \* \* whatever may be the limitations implied by the phrase "in connection with a common carrier by water" \* \* \*, there can be no doubt that wharf storage facilities provided at shipside for cargo which has been unloaded from water carriers are subject to regulation by the Commission.

The legislative history, while nowhere reaching the precise point at issue, contains no hint of an intent to create a dichotomy in the field of marine



forwarding between affiliated and independent forwarders. In the absence of legislative indicia to the contrary, the construction here urged is aided by the established canons that remedial legislation should be broadly construed and that statutory language should ordinarily be given its normal meaning. That appellees are easily embraced within a normal reading of the definition of "other persons" as including those "engaged in the business of forwarding \* \* \* in connection with a common carrier by water" is apparent from the crucial facts that their businesses exist only by reason of their acquired knowledge of carriers' rates, routes, and schedules, and of the documentation and packaging necessary to render freight transportable by such carriers. As in *California v. United States*, 320 U. S. 577, appellees' activities, which culminate in the making of contracts of affreightment with common carriers on export freight handled by them, occur in the terminal area immediately prior to the shipment of freight by, or upon its receipt from, common carriers.

Finally, the statutory purpose is defeated if independent forwarders like these, "necessary and vital agencies in the promotion of an American merchant marine" and not otherwise regulated, are at liberty to ignore the Act's requirements as to the conduct of auxiliary services. Section 17 of the Act provides that "every other person subject to this Act shall establish \* \* \* just and reasonable regulations and practices related



to or connected with the receiving, handling, storing, or delivering of property". The effectiveness of this and kindred Sections designed to protect the public should not depend on whether or not forwarders are affiliated with or compensated by carriers. And, to the extent that affiliation or compensation imports an agency relationship between the forwarder and carrier, the definition of "other persons" as those "not included in the term 'common carrier by water'" would seem superfluous under the construction given it below. Moreover, the Commission would be able to strike at such arrangements, if improper, by proceeding directly against the carrier involved.

#### ARGUMENT

THE APPELLEES ARE ENGAGED IN THE BUSINESS OF FORWARDING IN CONNECTION WITH A COMMON CARRIER BY WATER WITHIN THE MEANING OF SECTION 1 OF THE SHIPPING ACT

The Shipping Act of 1916, as amended, confers upon the Maritime Commission certain regulatory powers over two classes of persons: (1) "common carrier by water," defined, with certain exceptions, to mean a "common carrier engaged in the transportation by water of passengers or property" in interstate or foreign commerce, and (2) "other persons subject to this Act," defined to cover "any person not included in the term 'common carrier by water,' carrying on the business of forwarding or

furnishing wharfrage, dock, warehouse or other terminal facilities in connection with a common carrier by water" (Section 1; see Appendix, *infra*, pp. 35-36). The function of the Commission which gives rise to this case is its power, under Section 21 of the Act, to require "any common carrier by water, or other person subject" to the Act "to file with [the Commission] any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person \* \* \*" (Appendix, *infra*, p. 42).<sup>5</sup>

As the Commission's questionnaire of May 18, 1943, falls squarely within the definition of the reports which it may require of persons subject to the Act, there can be no doubt that appellees are responsive thereto if their activities constitute "carrying on the business of forwarding \* \* \* in connection with a common carrier by water."

That appellees are engaged in "carrying on the business of forwarding" is similarly not open to

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<sup>5</sup> "Other persons" subject to the Act are likewise subject to the requirements, prohibitions and liabilities imposed by Sections 15, 16, 17, 20, 22 and 23 of the Act. The partial repeal effected by Part III of the Interstate Commerce Act (49 U. S. C. 901 *et seq.*) of these Sections and Section 21 insofar as they relate to water carriers does not affect the Commission's powers of regulation thereunder insofar as "other persons" subject to the Act are concerned. See Section 320 (b) (3) of the Interstate Commerce Act, 49 U. S. C. 920 (b) (3); *Status of Wharfingers*, 251 I. C. C. 613, 616-617.

dispute. In their petition, appellees state that they "are engaged in arranging, in usual course of \* \* \* business, and as agents for others, for insurance, cartage, warehousing, and other services incidental to and including the affreightment of merchandise consigned to and from points within the United States, from and to points outside thereof; the services of [appellees] and their responsibilities to shippers in connection therewith being confined, in the ordinary course of business, to the terminal area \* \* \* [of the Port of New York], and [appellees] do not assume responsibility for delivery thereof at destinations" (R. 2). This summary of appellees' activities constitutes a precise description of the business of freight forwarding as normally understood by the courts. *Place v. Union Express Co.*, 2 Hilt. 19, 25 (N. Y.);<sup>6</sup> *In re Emerson, Marlow & Co.*, 199 Fed. 95, 98 (C. C. A. 7). And the court below expressly found that appel-

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<sup>6</sup> "A forwarder is one who, for a compensation, takes charge of goods entrusted or directed to him, and forwards them, that is, puts them on their way to their place of destination by the ordinary and usual means of conveyance" (2 Hilt. at 25).

<sup>7</sup> In the *Emerson, Marlow* case, a definition of "forwarder" taken from the Century Dictionary is quoted with approval as follows (195 Fed. at 98):

"Specifically in the United States, one who ships or sends forward goods for others to their destination by the instrumentality of third persons. \* \* \* Neither a consignor shipping goods, nor a carrier engaged in transporting them is a forwarder. The name is applied strictly to one who

lees are "engaged in business \* \* \* as forwarders of freight 'in foreign commerce'" (R. 127).

That such forwarding of freight involves the handling of freight for shipment by common carriers by water is implicit throughout the record. The court below found that appellees, "forwarders of freight in foreign commerce" in the Port of New York area, arrange for the "affreightment of merchandise consigned to and from points within the United States from and to points outside thereof" (R. 128), and appellees' own evidence plainly shows that their activities precede or follow shipments through a "common carrier by water"\* (R. 39-48).

undertakes to see the goods of another put in the way of transportation without himself incurring the liability of a carrier to deliver them."

See also *Acme Fast Freight v. United States*, 30 F. Supp. 968 (S. D. N. Y.), affirmed *per curiam*, 309 U. S. 638; *Roberts v. Turner*, 12 Johns. 232 (N. Y.); *Lehigh Valley R. R. Co. v. United States*, 243 U. S. 444; *Highway Freight Co. v. Commission*, 108 Pa. Super 178, 164 Atl. 835; *Bush v. Miller*, 13 Barb. 481, 488 (N. Y.); *Schloss v. Wood*, 11 Colo. 287.

\* As noted in the Statement, *supra*, p. 4, the appellees, in response to an early questionnaire of the Commission, stated that they "carry on the business of forwarding in connection with common carriers by water in foreign commerce" (R. 5, 24). The court below held that this answer was in error (R. 123), but plainly this characterization referred only to the restrictive construction of the phrase, "in connection with," and not to the undenied fact that appellees' forwarding operations precede or follow the transshipment of goods by common carrier by water.

These facts would seem to call for the conclusion urged by the Government below, that the "business of forwarding" in which appellees are engaged is "in connection with a common carrier by water." The court below, however, ruled that statutory definition was not "intended to extend to \* \* \* independent forwarders \* \* \* who perform services solely for the shipper and at his expense and whose dealings with the carrier are limited to contracting for transportation at the carrier's established rates" (R. 124). The court thought that in order for a forwarder to be "engaged in the business of forwarding \* \* \* in connection with a common carrier by water," it must be "a corporation subsidiary to or otherwise affiliated with the carrier, or \* \* \* [one] to whom the carrier pays compensation as an inducement to ship by its line" (R. 123). We submit that such a restrictive reading of broad language in a remedial statute is wholly unwarranted.

# I

A NORMAL READING OF THE STATUTORY PHRASE  
"IN CONNECTION WITH" MAKES IT APPLICABLE  
HERE

As already stated, the forwarding activities of the appellees as a rule immediately precede or follow shipment by a "common carrier by water," within the meaning of the Shipping Act, and with

respect to all freight handled for export, appellees' operations culminate in the making of contracts of affreightment with the carrier (R. 40-41). Such forwarding activities are "if not an economic necessity, at least an economic convenience and advantage" in the movement of the freight from origin to destination (see Bunge, *Law of Draymen, Freight Forwarders and Warehousemen* (1915), p. 107). Indeed, a Congressional Committee, considering legislation affecting marine forwarders, more recently described them as "necessary and vital agencies in the promotion of an American merchant marine" and as "the necessary link between the supplier and the buyer." H. Rep. No. 1682, 77th Cong., 2d Sess., p. 6. In every reasonable sense, of the term, therefore, they would seem to be "connected with" the common carrier, as required by Section 1.<sup>9</sup> The actuality of the "connection" between appellees and the common carriers by water is apparent from the crucial facts that appellees' businesses exist only by reason of such carriers and require an intimate knowledge and constant utilization of carriers' rates, routes and schedules, and of the documentation and packaging necessary to render

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<sup>9</sup> One meaning assigned by Webster to the term "to connect" (in its intransitive sense) is: "To meet or make connections for the transference of passengers, or change of means of communication" (New International Dictionary, 1916 and 1935).



freight transportable by such carriers.<sup>10</sup> These circumstances render the statutory language "in connection with" literally descriptive of appellees' day-to-day operations.<sup>11</sup>

<sup>10</sup> See R. 54-55; compare sample billings R. 36; 37-38. In H. Rep. No. 1682, 77th Cong., 2d Sess., p. 6, recommending the adoption of a later enacted amendment (Act of March 14, 1942, 56 Stat. 171, 46 U. S. C. 1127) to the Merchant Marine Act of 1936, some of the functions which a forwarder might perform in the handling of lend-lease cargo are described as follows:

- "1. Tracing the goods to assure their prompt movement.
2. Checking the arrival at the seaboard and arranging for the transfer to the steamer either by truck, lighter, or otherwise.
3. Checking the physical handling of the goods in the railroad yards to assure the shipment moving complete on one or two or more lighters.
4. Checking, where necessary, the actual unloading of the lighter or the placing of the lighter alongside the steamer within the reach of the ship's tackles.
5. Arranging for diversion en route from the port originally consigned to some other designated port.
6. Correlating shipments from different suppliers so that the essential shipments may all go together on one steamer.
7. Checking condition of packages or merchandise, re-coopering, remarking, and so forth.
8. Performing whatever documentary work may be necessary to dovetail with any system set up by the American or British Governments."

<sup>11</sup> As the Commission has held, casual or isolated instances of warehousing or forwarding of freight for common carriage by water would not be subject to the jurisdiction of the Commission since "other persons" subject to the Act under Section 1 must be engaged in the "business" of forwarding or furnishing terminal facilities in connection with common carriage by water. *Rates and Practices of Maurice Benin (Shipping) Ltd. & Sigma Trading Corporation*, Docket No. 616 (1942), 2 U. S. M. C. 662.



Moreover, any possible doubt as to the meaning of the phrase in question must be resolved in the Commission's favor, in view of the familiar canons requiring liberal construction of a remedial statute and the ascription of normal meaning to statutory language. Manifestly, if these tenets of construction obtain, the holding of the court below that appellees' businesses are not carried on "in connection with" common carriers by water, is unsupportable. Cf. *Daneiger v. Cooley*, 248 U. S. 319, 327.

The view that the words "in connection with a common-carrier by water" are broadly descriptive instead of severely restrictive as held by the court below, finds support in the only known reported federal cases construing the coverage of the phrase "other persons" subject to the Act. In *California v. United States*, and *City of Oakland v. United States*, 320 U. S. 557, state and municipal wharfingers were held subject to regulation under the Act as "other persons \* \* \* furnishing \* \* \* terminal facilities in connection with a common carrier by water," notwithstanding that they possessed neither of the qualifications thought by the court below in the present case to be essential—corporate affiliation with the carrier or inducement through compensation to ship by the carrier. The court below sought to distinguish these cases, however, on the ground that the wharfage facilities were there

"furnished under some form of continuing contractual or other relationship with the common carrier by water" (R. 123). But while some such relationship may possibly have existed between the State wharfinger and the carriers in *California v. United States*,<sup>12</sup> the same did not hold true in the companion case of *City of Oakland v. United States*. The record in the latter case established that, with the exception of a single pier assigned to a steamship line, the municipal wharves there, regulated were operated as commercial wharfinger facilities, either directly by the municipality or on lease by independent operators. (Record in No. 22, October Term, 1943, vol. 1, pp. 170-173; 379-380.) In both the *California* and the *Oakland* cases, moreover, the wharfingers argued that their wharfage and terminal facilities were not furnished "in connection with a common carrier by water" for the reason that the services rendered in the operation thereof were performed as agents for consignees and not under agreements with carriers, and that the latter had no interest in such services. (Brief for State of California, pp. 122-126—No. 20, October Term, 1943; Brief for City of Oakland, pp. 102-106—

<sup>12</sup> The facts there revealed were that: "Pier and office space is assigned by the [California] Board [of State Harbor Commissioners] to various steamship lines, and charges fixed by the Board are collected by these assignees for the Board" (320 U. S. at 579).

No. 22, same Term.) This Court summarily disposed of these contentions, stating (320 U. S. at 586):

And whatever may be the limitations implied by the phrase "in connection with a common carrier by water" which modifies the grant of jurisdiction over those furnishing "wharfage, dock, warehouse, or other terminal facilities," there can be no doubt that wharf storage facilities provided at shipside for cargo which has been unloaded from water carriers are subject to regulation by the Commission.<sup>13</sup>

The application of the Act by this Court to independent wharfingers, as "other persons" subject

<sup>13</sup> A similarly broad view of the phrase was taken by the Pennsylvania Supreme Court in *McVeely & Price Co. v. Philadelphia Piers, Inc.*, 329 Pa. 113. In that case, attempted state regulation of four wharfingers handling freight for transportation by water carriers was struck down on the grounds, *inter alia*, that the Federal Government had pre-empted the field by passage of the Act. Three of the wharfingers involved were owned by a railroad, the fourth appears to have been an independent operator; all four were held to be "other persons subject to the Act" as defined in Section 1. See 329 Pa. at 125-126. Compare the broad view taken by other courts of the scope of the phrase "in connection with" in other contexts. *Kokusai Kisen Kabushiki Kaisha v. Columbia S. Co.*, 23 F. Supp. 403, 405-406 (S. D. N. Y.) ("in connection with the operations to be carried out"); *Gurney v. Atlantic & Great Western Ry. Co.*, 58 N. Y. 358 ("services actually done in connection with that company's railways"); *People v. Liquorman*, 13 N. Y. Supp. (2d) 410, 171 Misc. 535 ("in connection with the restaurant business"); *Wallrabenstein v. Industrial Comm.*, 195 Wis. 15 ("in connection with such farm"); *Arnold Lumber Corp. v. Richardson*, 105 Fla. 204 ("in connection with any mill").

thereto, would seem to require its application to independent freight forwarders, whose "connection" with common carriers by water is essentially the same as that of the municipal wharfingers involved in the *City of Oakland* case.<sup>14</sup>

The only authority cited in support of the conclusion below—*Lehigh Valley R. R. Co. v. United States*, 243 U. S. 444—involved a different phrase ("connected with such [rail] transportation"), and related to a wholly different matter—the permissible allowances to shippers by carriers under the Interstate Commerce Act—and a wholly different purpose—the prevention of rebates in the guise of allowances for services.<sup>15</sup> Compare the broad construction given the phrase "in connec-

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<sup>14</sup> The dissent in that case disagreed with the majority only upon the question whether the powers entrusted to the Commission to regulate "unjust practices" included the power to prescribe minimum free-time for wharf storage. The dissent apparently recognized that Congress intended to include municipal wharfingers within the definition of "other person" in Section 1. See 320 U. S. 589.

<sup>15</sup> *Lehigh Valley R. R. Co. v. United States*, 243 U. S. 444, arose under Section 15 (13) of the Interstate Commerce Act, providing for "just and reasonable" allowances to shippers for services performed by them "in connection with such [rail] transportation." The question presented was whether certain services rendered to a railroad by a forwarder in maintaining offices, advertising the railroad and soliciting traffic for it, were services for which allowances were permitted by Section 15 (13). This Court cited the well recognized Congressional intent (*Interstate Commerce Commission v. Diefenbaugh*, 222 U. S. 42, 46-47; *Union Pacific R. R. Co. v. Updike Grain Co.*, 222 U. S. 215; 218-219; *United*

tion with the transportation" of liquor, as found in Section 239 of the Criminal Code (18 U. S. C. 389), in *Danciger v. Cooley*, 248 U. S. 319, 327-328.

## II

NOTHING IN THE LEGISLATIVE HISTORY JUSTIFIES DISREGARDING THE NORMAL MEANING OF THE PHRASE "IN CONNECTION WITH A COMMON CARRIER BY WATER".

Although the legislative history nowhere precisely reaches the point here at issue, it is, we submit, indicative solely of an intention to confine the auxiliary field of coverage ("other person[s] \* \* \* not included in the term 'common carrier by water'") to that related to the primary field of regulation ("common carriers by water" as defined by the Act). There is no hint in the legislative materials of any intention to create an artificial dichotomy within the field.

*States v. Baltimore & Ohio R. R. Co.*, 231 U. S. 274, 293; *United States v. American Sheet & Tin Plate Co.*, 301 U. S. 402, 406-408; *American Sugar Refining Co. v. Del. L. & W. R. R. Co.*, 207 Fed. 733, 737 (C. C. A. 3); *General Electric Co. v. New York Central & H. P. R. Co.*, 14 I. C. C. 237, 242) that the shipper should receive an allowance if, but only if, he performed a part of the actual transportation which the carrier was obligated to furnish, as set forth in Section 1 (3) of the Interstate Commerce Act, and which is susceptible of a charge under rail tariffs if allowance not be made. The Court held that the forwarder's services, "although in a practical sense 'connected with such [rail] transportation', were not connected with it as a necessary part of the carriage--were not 'transportation service'" (243 U. S. at 446-447).

of marine forwarders dependent upon some loosely defined concept of affiliation having no relationship to the objectives of the Act.

In the predecessor bill (H. R. 14337, 64th Cong.) to that which became the Act (H. R. 15455, 64th Cong.), the coverage of auxiliary services was provided for as follows:

The term "other person subject to this act" means any person not included in the term "common carrier by water" and carrying on the business of forwarding, ferrying, towing, or furnishing transfer, lighterage, dock, warehouse, or other terminal facilities in or in connection with the foreign or interstate commerce of the United States.

Obviously, this definition was inexact; if taken literally, it would include forwarders and terminal facilities operating in connection with rail shipments. The definition arrived at in the subsequent bill, H. R. 15455 which became the Act,<sup>16</sup>

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<sup>16</sup> As originally submitted, H. R. 15455 included ferrying, towing, transfer and lighterage concerns as well as those businesses now covered in the Act's definition of "other persons." Amendments to the bill on the floor of Congress, however, eliminated these services from coverage (53 Cong. Rec. 12804). It may be noted that the original inclusion of transfer and lighterage companies was apparently in response to the recommendations of the House Investigating Committee (which gave impetus to the entire legislation; see House Report No. 659, 64th Cong., 1st Sess., p. 27) that: " \* \* \* there should be legislation providing for equal treatment to all shippers and water carriers by transfer and

avoided these difficulties and, we believe, achieved its objective of including persons operating in terminal areas, and handling the freight or furnishing other related services or facilities immediately prior to its shipment by, or upon its receipt from, common carriers by water as defined in the Act. *California v. United States, supra*; cf. *McNeely & Price Co. v. Philadelphia Piers, supra*, n. 13. The requirement that the business of forwarding be carried on "in connection with a common carrier by water" is thus fully explained by the necessity of excluding forwarders whose business relates to commerce not regulated by the Act, such as rail or truck shipments. There is nothing in the House or Senate hearings on the two bills,<sup>17</sup> which were identically sponsored, in the Committee Reports on the legislation,<sup>18</sup> or in the debates, to indicate a more restrictive intent.

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lighterage concerns when forming a link in interstate or foreign commerce" (*id.* at 32). Although there exists no comparable statement concerning forwarding or terminal activities, it is at least inferable that the recommendation constitutes a definition of the intended scope of the present coverage since the terms "transfer" and "lighterage" were similarly modified in the bill as originally submitted by the words "in connection with a common carrier by water."

<sup>17</sup> Hearings on H. R. 14537 before the House Committee on the Merchant Marine and Fisheries (64th Cong., 1st Sess.); Hearings on H. R. 15455 before the Senate Subcommittee on Commerce (64th Cong., 1st Sess.).

<sup>18</sup> House Report No. 659, 64th Cong., 1st Sess.; Senate Report No. 689, 64th Cong., 1st Sess.



## III

THE PURPOSES OF THE ACT ARE AS FULLY APPLICABLE TO INDEPENDENT FREIGHT FORWARDERS AS TO THOSE AFFILIATED WITH ~~OR~~ CONTRACTUALLY RELATED TO A COMMON CARRIER BY WATER

The Act, in at least three Sections, subjects "other persons," as well as common carriers, to broad prohibitions against practices deemed detrimental to shippers, carriers or "other persons" subject to the Act. Nothing in these provisions affords any ground for the contention that Congress had in mind only those forwarders or operators of terminal facilities who are affiliated or contractually connected with a common carrier in the manner suggested by the court below. (See *supra*, p. 16.)

Section 15 of the Act (Appendix, *infra*, pp. 36-38) requires every common carrier by water and every "other person subject to" the Act to file with the Commission a copy of every agreement with another carrier or other person subject to the Act

\* \* \* giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic;  
 \* \* \* limiting or regulating in any way the volume or character of freight \* \* \* traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. \* \* \*

The Commission is then authorized to disapprove, cancel, or modify any agreement.

\* \* \* that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers \* \* \* or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act \* \* \*.

Further, Section 17 of the Act (Appendix, *infra*, pp. 39-40) directs every common carrier by water in foreign commerce "and every other person subject to" the Act to

\* \* \* establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. \* \* \*

Finally, Section 20 (Appendix, *infra*, pp. 41-42) makes it unlawful

\* \* \* for any common carrier by water or other person subject to this Act \* \* \* knowingly to disclose to \* \* \* any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this Act for transportation in interstate or foreign commerce, which information may be used to the detri-

ment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier \* \* \*.

Manifestly, the evils against which these prohibitions and mandates are directed would be equally harmful to the interests sought to be protected whether engaged in by "independent" forwarders and terminal operators or by those affiliated with or compensated by carriers. Notwithstanding the absence of such affiliated or compensated relationship, the disregard of these mandates can inflict damage upon shippers (as by discrimination between them) or upon consignees (as by the disclosure of confidential shipping information) by those engaged in the business of forwarding marine freight or of furnishing wharfage, dock, warehouse or other terminal facilities at shipside. As this Court noted in the course of its decision in *California v. United States*, 320 U. S. at 586, the legislative history of the Act discloses a specific intention to reach public as well as private operators of terminal facilities. In response to a question asked on the floor of Congress whether it was intended by the bill to deprive municipalities of control over city-owned terminal facilities, Congressman Alexander, Chairman of the House Committee on the Merchant Marine and Fisheries and manager of the bill, replied (53 Cong. Rec. 8276):

Not at all; only to prevent unjust discrimination between shippers. If they do

exercise such discrimination, there is no reason why they should not be amenable to law as well as a private person.

As shown in the consideration of the *California* and *City of Oakland* cases, discrimination may be, and was there, practiced by "independent" wharfingers. Equally, it is submitted, improper practices may occur in the operation of the other auxiliary services specifically named in the Act's definition of "other persons" (Appendix, *infra*, pp. 35-36) where such services constitute a closely related link in the transshipment of goods by water.

The court below conceded that "regulation of the forwarder is an appropriate and perhaps necessary means of preventing discrimination" between shippers, where the forwarder is affiliated with the carrier or is paid "compensation as an inducement to ship by its line" (R. 123). But certainly the practices of independent forwarders may equally constitute unjust or unreasonable "regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property" (see R. 82-83, 90-91, 108) proscribed in Section 17.<sup>19</sup> It may in fact be strongly argued that regulation of independent facilities is more "appropriate" and "necessary"

<sup>19</sup> The Commission's general investigation of Port of New York forwarders was launched following receipt of a complaint that a forwarder's billing made it impossible to determine what part of its total charge represented out-of-pocket expenses in obtaining the necessary drayage, documentation, etc., and what part represented service charges (R. 11, 33, 72, 76, 82, 103).

(R. 123) than where such facilities are operated in continual contractual arrangements with common carriers by water, for the Commission may strike at such arrangements, if utilized for the purposes of discrimination, directly through the carrier, and has done so in at least one case.<sup>20</sup> The necessity of regulating independent facilities as "other persons subject to the Act" has uniformly been recognized by the Commission.<sup>21</sup>

If not covered by the Shipping Act, appellees would not otherwise be subject to federal regulation because Part IV of the Interstate Commerce Act (49 U. S. C. Supp. IV, 1002 *et seq.*) does not apply to forwarders unless, *inter alia*, they assume responsibility for transportation from point of receipt to point of destination and unless they,

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<sup>20</sup> *In re Lawfulness of Payments to Shippers by Wisconsin & Michigan Steamship Co. through Automotive Dealers' Transport Co.*, Docket No. 457 (1938), 1 U. S. M. C. 744. Although the proceedings in this case later became moot because of the dissolution of the latter company by means of which discrimination was practiced, its significance lies in the fact that the Commission commenced its action directly against the carrier.

<sup>21</sup> *Long Beach Lumber Co., Inc. v. Consolidated Lumber Co.*, Docket No. 604 (1941), 2 U. S. M. C. 611 (charges of discrimination against public lumber wharf operator dismissed after hearing on merits); *Interchange of Freight at Boston Terminals*, Docket No. 617 (1942), 2 U. S. M. C. 671 (unreasonable practices by wharfage concern ordered terminated, no issue as to jurisdiction raised); *In the Matter of Services, Charges, and Practices of Carriers Engaged in the Eastbound Transportation of Lumber and Related Articles by way of the Panama Canal*, Docket No. 418 (1939), 2 U. S. M. C. 143 (investigation of both carriers and terminals participating in or connected with lumber transportation).

in the ordinary and usual course of their undertaking, assemble and consolidate or provide for assembling and consolidating shipments (see Appendix, *infra*, pp. 43-44). Appellees fall within neither class (see Statement, *supra*, pp. 6-7; R. 122, 40-41).

Finally, it may be noted that when Congress has wished to include only affiliates of transportation companies which are engaged in auxiliary transportation services, it has not encountered difficulty in framing specific language for this purpose. See Section 1 (First) of the Railway Labor Act (44 Stat. 577, 45 U. S. C. 151); Railroad Unemployment Insurance Act, Section 1 (a) (52 Stat. 1094, 45 U. S. C. 351); Carriers Taxing Act of 1937, Section 1 (a) (50 Stat. 435, 45 U. S. C. 261). The *California* and *City of Oakland* cases, moreover, demonstrate that coverage extends beyond carrier affiliates. It seems an obvious over-refinement to suppose that the requirement that "every other person subject to the Act shall establish \* \* \* just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property" (Sec. 17, *supra*, p. 27) was meant to extend otherwise only to forwarders who receive compensation from a carrier for shipping by its line.

The decision below not only ignores these considerations, but results in rendering almost superfluous the extension of the Act to other persons. According to the court below, the phrase "in con-



nection with a common carrier by water" was meant to embrace affiliated forwarders and such other forwarders "to whom the carrier pays compensation as an inducement to ship by its line, as in *Lehigh Valley R. Co. v. United States*, 243 U. S. 444, \* \* \* (R. 123).<sup>22</sup> But the relationship between the forwarder and the carrier in that case was obviously one of agency (see n. 13, *supra*), and where there is an affiliation or compensated contractual relationship, an agency may frequently if not invariably be established. If an agency relationship is a requisite to jurisdiction, the reference to forwarders in the Act's

<sup>22</sup> The court below later in its opinion characterized the services in the *Lehigh* case as "of the same character as those rendered by the the present plaintiffs," noting, however, that such services were held not to meet the requisites of Section 15 (13) of the Interstate Commerce Act (R. 124).

o Although we believe coverage of marine forwarders under the Act should not turn on the fact of a compensated relationship, it may be noted that appellees would seem to fulfill even this requirement. Based upon the record (R. 108-117), the court below found (R. 125) that each appellee "receives a commission or brokerage fee from the carrier with respect to shipments for which he acts as forwarder" and "collects forwarding fees from the shipper on the same shipment on which it collects brokerage from the carrier." This circumstance in itself is a potent inducement to discrimination, since the brokerage on large shipments may cause the free performance of forwarding services thereon to the prejudice of small shippers. Cf. *California v. United States*, *supra*; and see the answer of one appellee to the question: "Do you collect a commission or brokerage fee from the carrier and forwarding fees from the shipper on the same shipment?" (R. 108, 137). "Yes, brokerage on average shipment would not be sufficient to enable us to handle shipment" (R. 114).



definition of "other persons" as those "not included in the term 'common carrier by water'" accomplished nothing, for the Commission's established power to prevent discrimination by carriers (see, e. g., *Swayne & Hoyt, Ltd. v. United States*, 300 U. S. 297) would manifestly extend to its agents.<sup>23</sup>

#### CONCLUSION

For the reasons above stated, it is respectfully submitted that the decision of the court below should be reversed.

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SEPTEMBER 1945.

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<sup>23</sup> By Section 20 of the Act it is declared "unlawful for any common carrier by water or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, \* \* \* knowingly to disclose" facts as to any shipment which may be used to the detriment of the shipper." Again, if the relationship contemplated by the definition of "other persons" is one of agency with a carrier, the reference to "other persons" in Section 20 was superfluous since they would be embraced in the prohibition as agents of carriers.

## APPENDIX

The Shipping Act of 1916, as amended (39 Stat. 728, 46 U. S. C. 801 *et seq.*), provides in part as follows:

### Section 1 (46 U. S. C. 801):

When used in this Act:

The term "common carrier by water in foreign commerce" means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade: *Provided*, That a cargo boat commonly called an ocean tramp shall not be deemed such "common carrier by water in foreign commerce."

The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term "common carrier by water" means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port.

The term "other person subject to this Act" means any person not included in the

term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

The term "vessel" includes all water craft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

The term "documented under the laws of the United States," means registered, enrolled, or licensed under the laws of the United States."

Section 15 (46 U. S. C. 814):

Every common carrier by water, or other person subject to this Act, shall file immediately with the commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way

the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The commission may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the commission shall be lawful until disapproved by the commission. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the commission.

All agreements, modifications, or cancellations made after the organization of the commission shall be lawful only when and as long as approved by the commission, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, ~~modification, or cancellation~~ lawful under this section shall be excepted from the provisions of the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and amendments

and Acts supplementary thereto, and the provisions of sections seventy-three to seventy-seven, both inclusive, of the Act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," and amendments and Acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.

Section 16 (46 U. S. C. 815):

It shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Second. To allow any person to obtain transportation for property at less than the regular rates or charges then established and enforced on the line of such carrier by means of false billing, false classifications, false weighing, false report of weight, or by any other unjust or unfair device or means.

Third. To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this Act.

Whoever violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$5,000 for each offense.

#### Section 17 (46 U. S. C. 816):

No common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the commission finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

Every such carrier and every other person subject to this Act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing,



or delivering of property. Whenever the commission finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

Section 18 (46 U. S. C. 817):

Every common carrier by water in interstate commerce shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

Every such carrier shall file with the commission and keep open to public inspection, in the form and manner and within the time prescribed by the commission, the maximum rates, fares, and charges for or in connection with transportation between points on its own route; and if a through route has been established, the maximum rates, fares, and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water.

No such carrier shall demand, charge, or collect a greater compensation for such transportation than the rates, fares, and charges filed in compliance with this section, except with the approval of the commission and after ten days' public notice in the form and manner prescribed by the commission, stating the increase proposed

to be made; but the commission for good cause shown may waive such notice.

Whenever the commission finds that any rate, fare, charge, classification, tariff, regulation, or practice, demanded, charged, collected, or observed by such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice.

Section 20 (46 U. S. C. 819):

It shall be unlawful for any common carrier by water or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this Act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

Nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or

to any officer or agent of the Government of the United States, or of any State, Territory, District, or possession thereof, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime, or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

Section 21 (46 U. S. C. 820):

The commission may require any common carrier by water, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this Act. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the Commission so requires, and shall be furnished in the form and within the time prescribed by the commission. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of \$100 for each day of such default.

Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than \$1,000, or imprisonment for not more than one year, or to both such fine and imprisonment.

Section 22 (46 U. S. C. 821):

Any person may file with the commission a sworn complaint setting forth any violation of this Act by a common carrier by water, or other person subject to this Act, and asking reparation for the injury, if any, caused thereby. The commission shall furnish a copy of the complaint to such carrier or other person, who shall, within a reasonable time specified by the commission, satisfy the complaint or answer it in writing. If the complaint is not satisfied the commission shall, except as otherwise provided in this Act, investigate it in such manner and by such means, and make such order as it deems proper. The commission, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

The commission, upon its own motion, may in like manner and, except as to orders for the payment of money, with the same powers, investigate any violation of this Act.

Section 31 (46 U. S. C. 830):

That the venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the commission shall, except as herein otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district court having jurisdiction of the parties.

Part IV of the Interstate Commerce Act, 56 Stat. 284, provides in part as follows:

Section 402 (49 U. S. C. Supp. IV 1002):

(a) For the purposes of this part—

\* \* \* \*

(5) The term "freight forwarder" means any person which (otherwise than as a carrier subject to part I, II, or III of this Act) holds itself out to the general public to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to part I, II, or III of this Act.

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